

developed lower back pain and was unable to stand-up straight or walk as a result of sitting for over two hours in a narrow airline seat while in the performance of duty. He indicated that he was traveling for his job from San Jose, Costa Rica to Fort Lauderdale, FL. Appellant noted that he was 6'5" tall and that he had aggravated a previous lower back injury. He stopped work on February 20, 2018 and returned on February 23, 2018. On the reverse side of the claim form, the employing establishment checked a box marked "yes" indicating that the injury occurred in the performance of duty.

In a March 27, 2018 development letter, OWCP informed appellant that the evidence submitted was insufficient to establish his claim. It requested that he respond to an attached development questionnaire and provide medical evidence to establish that he sustained a diagnosed condition as a result of the alleged incident. OWCP afforded appellant 30 days to submit the necessary factual information and medical evidence. In a similar letter of even date, it requested additional information from the employing establishment regarding whether he was on travel status at the time of the alleged injury.

On April 10, 2018 OWCP received appellant's response to its development letter. Appellant explained that he was on official travel between February 4 and 7, 2018. He asserted that he developed "severe and immobilizing back pain" following his last flight due to flying in a seat with limited legroom for an extended period of time. Appellant noted that he had previously scheduled annual leave for February 12 through 16, 2018 and that he used the scheduled leave days for rest and recuperation due to his injuries. He reported that he returned to work on February 23, 2018, but was still unable to function normally.

In a February 23, 2018 report, Dr. Kemesha L. DeLisser, Board-certified in physical medicine and rehabilitation, related appellant's complaints of right shoulder, low back, and leg pain. She indicated that his pain was a return of his previous right lower extremity radicular pain, which was last treated in September 2016. Dr. DeLisser reviewed appellant's history and noted that a May 5, 2016 lumbar spine magnetic resonance imaging (MRI) scan showed several annular tears at L2-3, L3-4, and L4-5, a disc herniation at L4-5, and slight disc bulges at L5-S1. She conducted an examination and assessed lumbar intervertebral disc disorders with radiculopathy, right side lumbago with sciatica, and lumbago/low back pain.

In a March 15, 2018 report, Dr. DeLisser noted appellant's chief complaints of right shoulder, low back, and leg pain. She indicated that he was seen for "ongoing exacerbation of [right] low back pain" that had flared up in mid-February 2018 after taking several commercial flights on a cramped plane for work on February 7 and 9, 2018. Dr. DeLisser reviewed appellant's history and noted lumbar examination findings of restricted range of motion with side bending and positive presence of taut bands with left lower paraspinals on palpation. Straight leg raise and facet loading testing was positive on the right. Dr. DeLisser assessed lumbar intervertebral disc disorders with radiculopathy, right side lumbago with sciatica, lumbago/low back pain, and other chronic pain. She opined that appellant's pain was "likely due to multiple areas facet inflammation and irritation as well as a couple of annular tears" at L3-4 and L4-5.

In an April 6, 2018 report, Dr. DeLisser indicated that appellant was seen for follow-up for right lower back and right lower extremity pain and new right shoulder and neck pain, which flared up in mid-February 2018 after he took a flight for work. She reviewed his history and conducted

an examination. Dr. DeLisser assessed right shoulder pain, lumbar intervertebral disc disorders with radiculopathy, cervical spondylosis with radiculopathy, and cervicalgia.

In an April 18, 2018 letter, Dr. DeLisser related that appellant was treated in her office on February 23, 2018 for an exacerbation of low back and radiating right leg pain, which he alleged had started after taking a flight for work. She indicated that he was also treated on March 15 and April 6, 2018 for neck pain radiating to the right arm. Dr. DeLisser reported: "It is common that prolonged sitting, especially in uncomfortable positions, can exacerbate radiculopathy symptoms, which is consistent with the patient's report of exacerbation of pain following the flight."

OWCP also received official travel documents from the employing establishment and appellant's performance plan and appraisal for the period January 1 through December 31, 2017.

On April 24, 2018 appellant submitted his completed development questionnaire. He explained that he did not immediately notice the effects of his injury due to the late arrival of his flight home and because he did not engage in any activity such as significant walking, standing, or traveling by public transit the next day. Appellant indicated that the effects of the injury were latent and did not surface until after February 16, 2018. He reported that he had no additional injuries between the date of injury and the date it was first reported. Appellant explained that he hoped that he would improve with home treatment, but when his condition did not improve after 7 to 10 days, he contacted a physician. He reported his symptoms as stiffness, extreme pain, limited mobility, frequent spasms, muscle aches and cramps, and an inability to bend, stretch, lean, or twist his body. Appellant related that he had previously suffered from occasional lower back and lumbar ailments and that he was last treated for his lumbar conditions in September 2016.

By decision dated April 27, 2018, OWCP accepted that the February 7, 2018 employment incident occurred as alleged and that appellant was diagnosed with an aggravation of a preexisting lumbar condition. However, it denied his claim, finding that he had not established that the diagnosed condition was causally related to the accepted employment incident.

On May 18, 2018 appellant, through his then-counsel, requested a hearing before an OWCP hearing representative. A telephonic hearing was held on November 16, 2018.

Appellant submitted a December 13, 2018 letter, which was electronically signed by K.B., a nurse practitioner. K.B. indicated that he was currently being treated by Dr. DeLisser for chronic pain management. She reported that after a flight on February 7, 2018 appellant was forced into a cramped seat, which caused an acute exacerbation of the right L4-5 nerves due to body positioning. K.B. noted that he was diagnosed with a lumbar radiculopathy flare. She explained that appellant may have occasional flare-ups and limited mobility due to his lumbar radiculopathy and that these flare-ups may cause limited work ability.

By decision dated January 31, 2019, an OWCP hearing representative affirmed the April 27, 2018 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,³ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁴ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

In order to determine whether a federal employee has sustained a traumatic injury in the performance of duty, OWCP must first determine whether fact of injury has been established.⁶ There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.⁷ Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.⁸

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence.⁹ The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factor(s) identified by the employee.¹⁰ The weight of the medical

² *Id.*

³ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁶ *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *S.P.*, 59 ECAB 184 (2007).

⁷ *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁸ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *See S.A.*, Docket No. 18-0399 (issued October 16, 2018); *see also Robert G. Morris*, 48 ECAB 238 (1996).

¹⁰ *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.¹¹

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹²

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish aggravation of a lumbar condition causally related to the accepted February 7, 2018 employment incident.

Appellant submitted medical reports and letters from Dr. DeLisser dated February 23 to April 18, 2018. In an initial report, Dr. DeLisser related his complaints of right shoulder, low back, and leg pain. She indicated that his pain was a return of his previous right lower extremity radicular pain, which was last treated in September 2016. Dr. DeLisser reviewed appellant's history, including his previous diagnostic testing, and conducted an examination. In subsequent reports, she reported that he was seen for "ongoing exacerbation" of right low back pain that had flared up in mid-February 2018 after taking several commercial flights on a cramped plane for work on February 7 and 9, 2018. Dr. DeLisser assessed lumbar intervertebral disc disorders with radiculopathy, right side lumbago with sciatica, lumbago/low back pain, and other chronic pain. She opined that appellant's pain was "likely due" to multiple areas facet inflammation and irritation and annular tears at L3-4 and L4-5. The Board finds that Dr. DeLisser's opinion that his current back condition was "likely due" to facet inflammation, irritation, and annular tears at L3-4 and L4-5 is speculative in nature.¹³ The Board has held that medical opinions that are speculative or equivocal in character are of diminished probative value.¹⁴ An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is a causal relationship between the claimed condition and his or her federal employment.¹⁵ Dr. DeLisser's opinion, therefore, is insufficient to establish his claim.

In an April 18, 2018 letter, Dr. DeLisser further related that she treated appellant for an exacerbation of low back and radiating right leg pain, which had started after taking a flight for work. She reported: "It is common that prolonged sitting, especially in uncomfortable positions, can exacerbate radiculopathy symptoms, which is consistent with the patient's report of exacerbation of pain following the flight." Although Dr. DeLisser continued to attribute

¹¹ *James Mack*, 43 ECAB 321 (1991).

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *N.C.*, Docket No. 19-1191 (issued December 19, 2019); *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

¹³ *See P.D.*, Docket No. 18-1461 (issued July 2, 2019).

¹⁴ *D.B.*, Docket No. 18-1359 (issued May 14, 2019); *Ricky S. Storms*, 52 ECAB 349 (2001) (while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty).

¹⁵ *Robert A. Boyle*, 54 ECAB 381 (2003); *Patricia J. Glenn*, 53 ECAB 159 (2001).

appellant's current back symptoms to prolonged sitting during a flight, she did not sufficiently explain, based on medical rationale, how the February 7, 2018 flight aggravated his preexisting lumbar condition. Medical evidence that states a condition, but does not offer any rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁶ Such rationale is particularly important since appellant was also diagnosed with preexisting lumbar disc herniation and annular tears.¹⁷

Appellant also submitted a December 13, 2018 letter, which was electronically signed by K.B., a nurse practitioner. This letter is of no probative value, however, because a nurse practitioner is not considered a physician as defined under FECA.¹⁸

As appellant has not submitted rationalized medical evidence establishing an aggravation of a lumbar condition causally related to the accepted February 7, 2018 employment incident, he has not met his burden of proof.

On appeal appellant asserts that substantial evidence was submitted, which showed a causal relationship between his work-related travel and the lower back injury. However, as explained above, there is no rationalized medical opinion, based upon a proper factual and medical background, which explains how the February 7, 2018 employment incident either caused or aggravated his lumbar condition.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish aggravation of a lumbar condition causally related to the accepted February 7, 2018 employment incident.

¹⁶ *D.H.*, Docket No. 17-1913 (issued December 13, 2018); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

¹⁷ See *B.R.*, Docket No. 16-0456 (issued April 25, 2016).

¹⁸ 5 U.S.C. § 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. See also *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA). 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *S.L.*, Docket No. 19-0603 (issued January 28, 2020) (nurse practitioner); *R.L.*, Docket No. 19-0440 (issued July 8, 2019) (nurse practitioner).

ORDER

IT IS HEREBY ORDERED THAT the January 31, 2019 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 21, 2020
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board